IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1810 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THOBANBHAI RAMJIBHAI GAMI
Versus
STATE OF GUJARAT & ANR

==========

Appearance :
MR PF ADHVARYU for Applicant
MR BN KAKADIYA for Applicant
MR AY KOGJE APP for Respondent No.1
NOTICE UNSERVED for Respondent No.2

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 04/07/2006

ORAL JUDGMENT

1. Heard learned advocate Mr. P.F. Adhvaryu for the applicant and learned APP Mr.A.Y.Kogje for the respondent No.1 – State.

2. This petition is preferred by the complainant, applicant herein, of C.R.No.I-16/2005 registered before the Shethwada Police Station, Camp at Dhrafa, Sub-District: Jamkhambhaliya, District: Jamnagar on 26th April, 2005 at 13.30 hours in respect of murder of Dineshbhai Karsanbhai Gami Patel nephew of complainant Thobhanbhai Ramjibhai Gami Patel, the applicant herein. According to this FIR, the applicant was not an eye witness, but on informing by the wife of deceased Dineshbhai that Dineshbhai had not returned to his home, complainant went in search of Dineshbhai. At the out-skirt of village Dhrafa, complainant met with one labourer and asked about Dineshbhai. The labourer informed the complainant that deceased Dineshbhai had not seen by him, but near the

field of accused Arvind @ Vinod Bhagwanji, he heard some commotion at about 8.30 in the morning. The complainant proceeded towards the field of the accused Arvind @ Vinod Bhagwanji and found the dead-body of deceased Dineshbhai in injured condition along with one sword, one iron-rod, stone and one mobile phone. Nearby motor cycle of deceased Dineshbhai was parked and on inquiring, the applicant came to know that the accused at 8.30 a.m. on 26.04.2005 attacked his nephew Dineshbhai with weapon like stone, iron rod and caused death. On registering the said FIR investigation was carried out by Police Sub Inspector Mr.Parmar and charge-sheet came to be filed in concerned Court on 21.06.2005 against accused. However, during the trial vide Ex.60 in the said Sessions Case No.72 of 2005, the applicant preferred an application stating that the wife of the deceased had requested Home Department to undertake investigation by CID Crime branch and vide letter of the Government which is dated 24.06.2005 wife of the deceased was informed that the department has decided to

investigate the crime through Additional Police Commissioner, CID Crime and Railway Gujarat State. Therefore, it was requested before the trial Court that in the said crime, an application for reinvestigation was granted by the Government and the trial was required to be deferred. On 24.10.2005, learned Presiding Officer, Fast Track Court, Khambhaliya directed the concerned Investigating Officer, PSI Mr.Parmar to explain that even though the investigation was handed over to the CID Crime under what circumstances PSI Mr.Parmar continued with the investigation. Instead of staying the trial, the learned Judge deferred the trial till 29.10.2005 and asked for the report from the concerned Investigating Agency.

3. Thereafter, this petition came to be filed by the original complainant, applicant herein with the following prayers:

[A] This Hon'ble Court be pleased to admit the present Criminal Misc. Application (now converted into Special Criminal Application) preferred by

the present applicant.

[B] Your Lordships may be pleased to pass the appropriate order under Sec.482 of the Cr.P.C. and pleased to quash and set aside the order dated 14.10.2005 passed in Sessions Case No.73 of 2005 by the Hon'ble Presiding Officer, Fast Track Court, Khambhaliya and thereby pass the appropriate order of quashing and setting aside investigation agency of the said Vadala Police Station, District: Jamnagar.

[C] Your Lordships may be pleased to stay the further proceeding and trial of the Sessions Case No.73/2005 which is commenced and proceeded on the basis of the investigation report submitted by the Sheth Vadala Police Station, District: Jamnagar and not by the CID Crime, State of Gujarat.

[D] Your Lordships may be pleased to pass the appropriate order, or direction in pursuance to the letter dated June, 2005 of the Home Department that complete the investigation of the offence by the CID Crime and submit the report in

the Sessions Case No.73/2005 pending before the Sessions Court, Khambhaliya, District: Jamnagar.

4. Initially,, the application was filed as Criminal Misc. Application under Section 482 of the Code of Criminal Procedure and afterward converted into Special Criminal Application under Article 226 of the Constitution of India. The trial came to be stayed vide order passed on 22.12.2005 by this Court and the State was called upon to respond the contents of the petition as well as the nature of prayer asked for by the applicant. Thereafter, it appears that the some orders are passed and ultimately, an affidavit of one Shri J.H.Gameti, Detective P.I., State CID Crime, Jamnagar Unit came to be filed in this Court and the affidavit is sworn on 18th day of February, 2006. Vide order passed on 21.06.2006, learned advocate for the applicant was requested to counter the affidavit, if so deemed fit filed by the CID Crime branch. However, no additional counter affidavit is filed, but the learned advocate for the applicant has addressed this Court in detail.

5. It is submitted by the learned advocate for the applicant that vide letter dated 18.05.2005, the wife of the deceased requested the Chief Minister to appoint independent agency as the local police was not likely to investigate the brutal crime of the murder of her husband and nobody was coming forward to give evidence. It is submitted that Home Department vide its letter dated 27.05.2005 informed the wife of the deceased that as per the directions of the Hon'ble Minister of the Home Department, the investigation was handed over to the District Superintendent of Police, Jamnagar. Then again on 21.11.2005, the wife of the deceased was informed about the progress of the case by Section Officer, Home Department. Vide letter dated 24.06.2005, the wife of the deceased was informed by the Home Department that the investigation was handed over to the Deputy Inspector General, CID Crime and Railway, Gujarat State, Gandhinagar. It was submitted that even this being the situation, the local police proceeded with the investigation and filed charge-sheet in haste. It is submitted

that local police was well aware that the orders are passed to investigate the crime through CID because this is evident by the letter issued by Police Sub-Inspector, Shethwada Police Station to the Public Prosecutor Jamnagar placed on record as Annexure-F. It is further submitted that vide letter dated 08.10.2005 CID Crime branch informed to the Public Prosecutor, Jamnagar that though the investigation was handed over to CID Crime, but since the local police had filed the charge-sheet and when the case was pending in the Court, it was not necessary to investigate further in the matter. It was, therefore submitted by the learned advocate for the applicant that the crime of such severe nature wherein a young human being lost his life brutally, local police did not investigate the matter properly and filed charge-sheet, while CID Crime abandoned investigation on the pre-text that the charge-sheet has already been filed. It is submitted that therefore, an application came to be filed before the trial Court calling for the reports from CID Crime. Till today, it is submitted by the learned

advocate for the applicant that no such report, either from the local police which investigated the crime or from CID Crime, came to be filed in the Court below. In sum and substance, it is submitted that in pursuance of the order passed by the Home Department in June, 2005, CID Crime be directed to complete the investigation and submit report in Sessions Case No.73 of 2005.

6. Learned APP Mr.A.Y.Kogje for the respondent – State draw the attention to this Court towards the affidavit-in-reply filed by Shri J.H.Gameti, Detective P.I., State CID Crime, Jamnagar Unit. It is submitted that de facto CID Crime might not have investigated, but concerned superior officer of the branch has gone through the papers of the charge-sheet prepared by the local police and has found no illegality or irregularity in investigation and hence, the question of the investigation by CID Crime would not arise at all. It is submitted that the application deserves to be dismissed.

7. Having heard learned counsels for the parties

and going through the record, it appears that this situation has arisen due to communication gape between the concerned department of the police. Perhaps while entrusting the investigation to CID Crime branch, Home Ministry could not, simultaneously, issued the direction to the local police. Be that as it may, but the fact remains that the charge-sheet came to be filed on 21.07.2005 and the directions of th Home Department to investigate the offences was received by CID Crime on 24.06.2005. It is necessary, therefore, to go through the version of the CID Crime which is placed on record in the shape of an affidavit. It is further stated in the affidavit that Additional D.G. Railway of the CID Crime received such order on 02.07.2005, a necessary procedure required to be followed and the concerned Superintendent of Police forwarded file to Additional D.G. on 14.08.2005, the reason given is, the Superintendent of Police was busy with investigation in another case on the same day. On 14.08.2005, the file was cleared and the permission was granted for investigation of the

said case. The papers were called for from the concerned Police Station in response to the application preferred by the prosecution side on 22.04.2005. It was revealed during that process that the charge-sheet had already been filed on 21.07.2005 and local police officer had carried out investigation covering all the contentions raised by the complainant in the complaint. It must be remembered that the responsible officer has stated on oath that the conclusion had reached after perusing the papers of investigation as has been made available to them by the police and ultimately, the CID Crime branch came to the conclusion that no further investigation was required, because the matter was investigated covering all the contentions raised by the complainant. Therefore, CID Crime, accordingly, informed Home Department about the situation and that further investigation was not necessary in the said case. The Home Department accepted the decision taken by CID Crime.

8. It is settled law that once the charge-sheet is submitted, there could not be any re-

investigation of crime. What is permissible is further investigation in terms of Section 173(8) of the Code of Criminal Procedure. When the matter is weighed and scanned under exercise of powers vested in this Court vide Article 226 of the Constitution of India, it is clear that the process of whatever nature carried out by CID Crime be termed as an investigation under Section 173(8) of the Code of Criminal Procedure and conclusion arrived at in this regard cannot be disturbed exercising extra-ordinary powers. True it is that when any investigation is not carried out according to law, this Court under extra-ordinary powers can set aside illegalities and irregularities, but the interference in the investigation has very limited scope and powers are restricted by self restrained. What is stated in the affidavit filed by the CID Crime makes it clear that the crime department had gone through the papers and had found investigation by the local police in accordance with law and when charge-sheet was filed on 21.07.2005, there could not be reinvestigation. It is also true that when

Home Department wanted the crime investigated by CID Crime was required to act promptly and local police could have been prevented to investigate the crime and investigation could have been handed over to CID Crime. But as aforesaid, thereafter also, in terms of Section 173(8) of the Code of Criminal Procedure, CID Crime has endevoured to find out, if any illegality had been committed, now the question of submitting any further report by any police would not arise at all.

9. In this view of the matter, the prayers asked for by the applicant cannot be granted and this petition stands dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

[J. R. VORA,J.]

(vijay)